

DISTRICT OF COLUMBIA  
DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

NOTICE OF EMERGENCY RULEMAKING

The Commissioner of the Department of Banking and Financial Institutions, pursuant to the authority set forth in Mayor's Order 2001-91, dated June 22, 2001, and Section 1406 of the Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000, effective April 3, 2001, (D.C. Law 13-263) ("Act"), hereby gives notice of the adoption on an emergency basis of the following amendment to Title 26A DCMR, "Banking and Financial Institutions" to revise emergency regulations issued on August 31, 2001, which added a new chapter, "Chapter 20 Real Estate Finance and Predatory Lending" to establish rules for the Act.

This emergency rule is necessary to immediately clarify the published definitions of "home loan", "home loan adjusted rate" and "mortgage lender" and to clarify the "Red Flag Warning" Form 601(j), which is required by statute to warn borrowers against the abuses of predatory lending. This emergency rule is necessary to reduce the confusion associated with the ongoing implementation of the predatory lending protections needed to stop predatory lending and other lending abuses that are prevalent in the District. These abuses continue to result in the loss of homes by District residents and the destabilization of District neighborhoods. Without the predatory lending protections, vulnerable District residents, such as elderly and minority residents, will continue to face the loss of their homes. This emergency rule will improve the implementation of the Act's provisions relating to the creation, administration, release, enforcement, foreclosure and auditing of real estate loans in the District of Columbia, and predatory lending protections.

This emergency rule was adopted on September 28, 2001, and became effective immediately on that date. This amended emergency rule will expire in one hundred twenty (120) days from the effective date or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

Chapter 20 Real Estate Finance and Predatory Lending is amended to read as follows:

Section 2001.5 is amended to read as follows:

Section 2001.5      The term "home loan adjusted rate" as defined in Section 101(13) of the Act, provides a stabilized yield on a residential loan, and shall be expressed as an annual percentage, that incorporates the effect of the total origination points and fees and the total discount points and fees charged by the noteowner, mortgage broker and mortgage lender for originating the loan and reducing the stated interest rate on the loan, and then reduces such stabilized yield by one hundred (100) basis points, depending on whether the loan is a fixed-rate mortgage or a five-year or longer adjustable rate

mortgage. This yield calculation shall be made as of the date the interest rate was agreed upon by the borrower and lender. The home loan adjusted rate shall be used to measure the total cost (yield) of the loan, not just part of the points and fees charged, and then reduce such total cost by one hundred (100) basis points to allow for variances in loan programs.

Section 2001.6 is amended to read as follows:

The exemption under Section 101(12) B (iv) and (v) shall not be available for loans where the first interest rate adjustment or principal and interest payment amount adjustment is permitted before the fifth anniversary of the date of the note secured by the residential lien instrument.

Section 2027.6(g) is amended to read as follows:

- (g) A specific explanation of how the loan program will help prevent foreclosures and predatory lending abuses in the District of Columbia; and

Section 2099.1 (5) is amended to read as follows:

- (5) **Mortgage Lender** – any person who makes a mortgage loan to any person or engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person. A mortgage lender shall not include the following:
  - (i) The Federal Home Loan Mortgage Corporation;
  - (ii) The Federal National Mortgage Association;
  - (iii) The Government National Mortgage Association; or
  - (iv) Any person engaged exclusively in the acquisition of all or any portion of a mortgage loan under any federal, state, or local government program of mortgage loan purchases.

The “Red Flag” Warning (Form 601(j)) is amended to read as follows:

**FORM 601(j)****"RED FLAG" WARNING**

This notice concerns your application for a loan to be secured by your home. Your mortgage broker or lender should provide this notice to you within 3 days after you submitted your loan application.

You should fully understand the information in this form before you close on your loan or sign any loan documents or agreements. This form will assist you in determining whether your mortgage broker or lender may be engaging in predatory lending practices in violation of District of Columbia law.

**REMEMBER A MORTGAGE GIVES A LENDER THE RIGHT TO  
FORECLOSE ON YOUR HOME!**

**IF YOU CANNOT OR DO NOT PAY THE MONTHLY PAYMENTS  
ON TIME, YOUR HOME CAN BE SOLD AND YOU COULD LOSE  
YOUR EQUITY IN YOUR HOME AND BE EVICTED!**

If you answer yes to one or more of the following questions, your lender may be engaging in predatory lending practices in violation of the District of Columbia Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000, effective April 3, 2001 (D.C. Law 13-263; 48 DCR 991).

Please note that this list is not exclusive and does not contain all the possible lending abuses and violations that may occur. The District of Columbia Department of Banking and Financial Institutions highly recommends that you seek assistance or advice from the list of Housing Counseling Agencies available from the Department of Banking and Financial Institutions (1400 L Street, N.W., Suite 400, Washington, D.C. 20005), your Attorney, Accountant or Financial Advisor before you sign any loan agreement.

1. Red Flag Warning 1: Unaffordable Loan. Are you spending 50% or more of your gross monthly income for the new monthly mortgage payment? For example, you may be retired, disabled, handicapped or you may be consolidating (paying off) credit cards, auto, personal or other loans with this refinance and not reducing your overall monthly payments substantially. *If your answer is yes, your lender may be making a home loan to you that you are unable to afford.*

2. Red Flag Warning 2: Financed Credit Insurance. Have you purchased single-premium credit insurance with your new loan and is the single-premium credit insurance being financed through your loan? *If your answer is yes, your lender may be engaging in a predatory lending activity.*

3. Red Flag Warning 3: Repeated Refinancings. Have you refinanced your home more than once in the last 18 months and is your lender financing more than \$400 of your previous points and fees in your new loan? *If your answer is yes, your lender may be engaging in repeated refinancings or "flipping" of your home in violation of the law.*
4. Red Flag Warning 4: Encouraging Nonpayment. Have you been informed by your lender that, because you are refinancing, you should not continue to pay on your existing loan? *If your answer is yes, your lender may be encouraging you to default on your existing loan in anticipation of refinancing in violation of the law.*
5. Red Flag Warning 5: Unreasonably High Interest Rate. Do you have a new loan with an annual percentage rate substantially greater than the rate you think you would otherwise have qualified for? For example, your interest rate is more than 3% above the rates for 30-year fixed rate mortgages published in the Washington Post each Saturday in the Real Estate Section or the Washington Times each Friday in the Home Section. *If your answer is yes, your lender may be using your credit scores inaccurately or improperly in violation of the law.*
6. Red Flag Warning 6: Failure To Report Good Payment History. Was your favorable payment history and information **not** reported to a nationally recognized credit reporting agency for a period of more than 6 months? *If your answer is yes, your lender could be failing to report your favorable credit history and may be in violation of the law.*
7. Red Flag Warning 7: High Fees And Charges. Are you paying an amount in loan origination and discount points and other finance charges for your new loan (such as an amount equal to 5 loan origination or discount points)? *If your answer is yes, your lender may be charging you a fee which, when considering your total home loan transaction, appears unconscionable.*
8. Red Flag Warning 8: Increased Interest Rate On Default. Do you have a home loan that includes a provision that increases the home loan's interest rate upon default? *If your answer is yes, your lender may be engaging in a predatory lending activity.*
9. Red Flag Warning 9: Improper Fees. Have you been charged fees for services that are not actually performed or charged loan discount points that do not reduce or materially result in a reduction of your interest rate? *If your answer is yes, your lender may be acting in violation of the law.*
10. Red Flag Warning 10: Failure To Provide Notice. Did you fail to receive a copy of this "Red Flag--" Warning (Form 601(j)) from your lender within 3 days of submitting your home loan application? *If your answer is yes, your lender may have failed to send you a required disclosure notice.*
11. Red Flag Warning 11: Prepayment Penalty. Have you been charged a prepayment premium, fee or charge? *If your answer is yes, your lender may be engaging in a predatory lending activity.*

12. Red Flag Warning 12: Balloon Payment. Do you have a home loan with a scheduled balloon payment in less than 7 years? *If your answer is yes, your lender may be engaging in a predatory lending activity.*

13. Red Flag Warning 13: Advance Waiver. Have you waived a violation of any provision of your new loan in advance of finalizing your loan? *If your answer is yes, your lender may be imposing an advance waiver provision on you in violation of the law.*

14. Red Flag Warning 14: Mandatory Arbitration. Does your new home loan contain any mandatory arbitration clauses? *If your answer is yes, your lender may be engaging in a predatory lending activity.*

15. Red Flag Warning 15: Limit on Court Relief. Does your new home loan contain any mandatory limitations on your right to seek relief through the judicial process? *If your answer is yes, your lender may be engaging in a predatory lending activity.*

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**I hereby certify that this form was delivered to me on the**

**\_\_\_\_\_ day of [month, year]**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name (Please Print)**

\_\_\_\_\_  
**Date**